



September 15, 2016

Ms. Wojnarowski,

The National Coalition for a Civil Right to Counsel is pleased to submit these brief comments in response to the draft report, *Civil Rights and Civil Asset Forfeiture in Michigan*.

We wholeheartedly support the report's recommendation that "all property owners be afforded the right to court-appointed counsel in civil forfeiture cases where basic needs are at risk, such as shelter, sustenance, safety, health, or child custody" and that "the Department should require partnering state and local jurisdictions to uphold this right, and recommend the same of all law enforcement agencies." As the draft report thoroughly outlines, the lack of counsel in forfeiture proceedings significantly increases the risk of an erroneous deprivation and is likely to disproportionately impact communities of color.¹ The stakes are high for defendants in these proceedings: when the federal government enacted legislation to provide a right to counsel in certain federal civil forfeiture cases, the House Judiciary Committee's report recommending the legislation observed that civil forfeiture is "so punitive in nature that appointed counsel should be made available for those who are indigent, or made indigent by seizure in appropriate circumstances."² Moreover, civil forfeiture cases are likely to fall through the cracks in terms of legal services provided via public defenders, civil legal aid, and the pro bono bar,³ which further necessitates the extension of a right to appointed counsel.

We would like to offer one small clarification: after citing the 2006 ABA Resolution calling for a right to counsel in basic human needs cases such as shelter, safety, sustenance, health, and child custody, the report states on page 10, "Although as of the writing of this report no such protection exists at either the state or federal level, several State Bar Associations have issued similar recommendations and have launched efforts to better protect the civil right to counsel

¹ Rebecca Vallas, Tracey Ross, Todd Cox, Jamal Hagler, and Bill Corriher, *Forfeiting the American Dream: How Civil Asset Forfeiture Exacerbates Hardship for Low-income Communities and Communities of Color*, Center for American Progress (April 2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/04/01060039/CivilAssetForfeiture-reportv2.pdf>.

² H.R. Rep. No. 106-192, at 14 (1999).

³ Louis S. Rulli, *Access to Justice and Civil Forfeiture Reform: Providing Lawyers for the Poor and Recapturing Forfeited Assets for Impoverished Communities*, 17 Yale L. & Pol'y Rev. 507, 515 (1998) ("[T]he public defender's office will not represent them because these are not criminal proceedings, and the local legal services program, already seriously under-funded and facing exploding client demand, cannot staff forfeiture cases even if they fall within the program's ever-narrowing case acceptance priorities. The private bar's pro bono program would like to help, but also is overtaxed with referrals for family law and child disability cases.")

within their jurisdictions.” While it is true that no jurisdiction has a right to counsel for all basic human needs cases, every state has provided for a right to counsel covering at least some of these areas. For instance, virtually every state has a right to counsel in child custody proceedings brought by the state, and in mental health proceedings involving civil commitment, while some states have extended a right to counsel to domestic violence and private custody proceedings. And a few states provide a right to counsel in civil forfeiture proceedings under certain circumstances. We track the status of the right to counsel in every state, as well as all the current expansion efforts on the interactive map on our website, <http://www.civilrighttocounsel.org>.

Thank you again for the hard work of the Michigan Advisory Committee, and we look forward to the finalization of this report.

Sincerely,

John Pollock
Coordinator, National Coalition for a Civil Right to Counsel